

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CIVIL NO. 1:08CV34
(1:06CR31)

JONATHAN DAVID HARRISON,)
)
 Petitioner,)
)
 Vs.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)
 _____)

ORDER

THIS MATTER is before the Court *sua sponte* to require the Government to supplement its response filed April 29, 2008.

The Petitioner and eleven co-defendants were charged in a one count indictment with the manufacture and possession with intent to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 846.

Bill of Indictment, filed June 16, 2006. The indictment specifically charged that the conspiracy “involved 500 grams or more of a *mixture* or substance containing a detectable amount of methamphetamine.” *Id.* **(emphasis added)**. On June 16, 2006, the Petitioner and the Government entered into a plea agreement wherein it was stipulated and agreed that

the “amount of methamphetamine (**ACTUAL**) that was known to or reasonably foreseeable by the defendant was at least 500 grams but less than 1.5 kilograms.” **Plea Agreement, filed June 16, 2006 (emphasis added).**

After entry of Petitioner’s guilty plea, a presentence report was prepared which calculated the offense level in accordance with the amount of **ACTUAL** methamphetamine stated in the plea agreement rather than the amount of the **MIXTURE** of methamphetamine charged in the indictment. **See Presentence Investigation Report, revised December 18, 2006, at 9 (“The defendant is responsible for at least 500 grams but less than 1.5 kilograms of *actual* methamphetamine.”).**

Therefore, the issues for the Government to address are: Inasmuch as the indictment did not charge **ACTUAL** methamphetamine but rather a **MIXTURE** containing a detectable amount of methamphetamine, could the Court properly base its sentencing decision on the Petitioner’s involvement with **ACTUAL** methamphetamine (which carries a higher punishment by several levels) rather than his involvement with a **MIXTURE** of methamphetamine?

If the Government's answer to the above issue is, "No," would the facts alleged by Petitioner support or require a finding of ineffective assistance of counsel?

IT IS, THEREFORE, ORDERED that the Government file a supplemental response to the Court's inquiry within 10 days from entry of this Order.

Signed: September 25, 2008

A handwritten signature in dark ink, appearing to read "L. H. Thornburg", is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

